

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellant,

v.

TINA MARIE STOLTENBERG,
Appellee.

No. 2 CA-CR 2013-0212
Filed April 18, 2014

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

NOT FOR PUBLICATION

See Ariz. R. Sup. Ct. 111(c); Ariz. R. Crim. P. 31.24.

Appeal from the Superior Court in Pima County

No. CR20123043001

The Honorable Javier Chon-Lopez, Judge

DISMISSED

COUNSEL

Barbara LaWall, Pima County Attorney, Tucson
By Amy S. Ruskin, Deputy County Attorney
Counsel for Appellant

Lori J. Lefferts, Pima County Public Defender
By Michael J. Miller, Assistant Public Defender, Tucson
Counsel for Appellee

STATE v. STOLTENBERG
Decision of the Court

MEMORANDUM DECISION

Judge Miller authored the decision of the Court, in which Presiding Judge Vásquez and Chief Judge Howard concurred.

MILLER, Judge:

¶1 Pursuant to a plea agreement, Tina Stoltenberg was convicted of driving under the extreme influence of liquor and criminal damage. On May 6, 2013, the trial court suspended the imposition of sentence and placed Stoltenberg on a twenty-four-month term of probation and ordered her to serve two days in jail as a condition of probation. Pursuant to A.R.S. § 13-4032(5), the state filed a notice of appeal on May 29, 2013, twenty-three days after sentencing.

¶2 The state acknowledges that whether its notice of appeal was timely depends on which of this court's decisions applied: *State v. Whitman*, 232 Ariz. 60, 301 P.3d 226 (App. 2013) or *State v. Montgomery*, 233 Ariz. 341, 312 P.3d 140 (App. 2013). We stayed this case until our supreme court could resolve the issue in *State v. Whitman*, No. CR-13-0201-PR (Apr. 9, 2014). The court vacated our earlier decision in *Whitman*, concluding the deadline to file a notice of appeal is measured from the sentencing date. *Whitman*, No. CR-13-0201-PR, ¶ 19. Therefore, the state's notice of appeal is untimely.

¶3 We dismiss this appeal due to lack of jurisdiction. See *State v. Littleton*, 146 Ariz. 531, 533, 707 P.2d 329, 331 (App. 1985) ("The filing of a timely notice of appeal is essential to the exercise of jurisdiction by this court.").